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OFFICE OF GENERAL  
COUNSEL

**CONFIDENTIAL**

Via Hand Delivery

Jeff Jordan, Assistant General Counsel, CELA  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 7014 and MUR 7017

Dear Mr. Jordan:

This letter is on behalf of Coalition for Progress and Ana Rivas in her official capacity as Treasurer (collectively referred to as "CFP") in response to the complaints filed in the above-captioned matters by Citizens for Responsibility and Ethics in Washington (CREW), Campaign Legal Center, and Democracy 21 regarding receipt of a \$1,000,000 contribution from DE First Holdings by CFP. As will be discussed further herein, the Commission should dismiss these complaints outright because there were no factual allegations set forth in either complaint purporting to demonstrate that CFP knowingly accepted a contribution made in some other person's name.

**There is no basis for finding "reason to believe" a violation by CFP occurred**

It is "Political Law 101" that a complaint should satisfy some very basic standards, such as setting forth specific facts that, if true, constitute a violation of the Federal Election Campaign Act of 1971 (the "Act").<sup>1</sup> Neither of the complaints asserts any factual statements that relate to a violation of the Act by CFP or that even hint at some sort of improper conduct by CFP. The only factual allegation related to CFP is that DE First Holdings made a \$1,000,000 contribution that was received by CFP on December 24, 2015. This has never been disputed by CFP;<sup>2</sup> nor does it constitute a violation of the Act.

Count II of the MUR 7014 complaint cursorily states that "if Coalition for Progress and Ms. Rivas knowingly accepted a contribution" made by one person in the name of another they

<sup>1</sup> 11 C.F.R. § 111.4.

<sup>2</sup> See Coalition for Progress's 2015 Year-End FEC Report at <http://docquery.fec.gov/cgi-bin/fecimg/?201604159012514768>.

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“may” have violated the Act.<sup>3</sup> However, the complaint does not contend in its factual allegations that CFP knowingly accepted a contribution made by one person in the name of another person or lay out any facts that would lead someone logically to that conclusion.<sup>4</sup> Obviously, if the complainants had some sort of evidence or even a mere theory related to CFP’s knowing receipt of a contribution in the name of another, they would have gladly raised that theory for the FEC.<sup>5</sup>

Overall, the MUR 7014 conclusory conjecture clearly fails to satisfy the Commission’s guidance that a complaint “contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.”<sup>6</sup> Here, we have weak supposition that “if” CFP knowingly received a contribution in the name of another it “may” be in violation of the Act without a single factual allegation supporting the conclusion. In fact, even if every factual allegation made in the complaints were true, it would not constitute a violation of the Act by CFP because there are no factual allegations related to purported CFP misconduct.

The Commission can and should apply the proper filter by using the legal threshold built into the enforcement process—the requirement that there be “reason to believe that a person has committed . . . a violation.”<sup>7</sup> Commissioners have used many different descriptive terms over the years to explain the basic shortcomings of complaints that spew out spurious allegations: “speculative,” “complainant provided no evidence,” “fails to allege specific, documented facts,” “complainant did not know,” “no basis to support,” “mere ‘official curiosity’ will not suffice,” “unwarranted legal conclusions from asserted facts,” and “evidence is inadequate.”<sup>8</sup> Where a

<sup>3</sup> MUR 7014 Complaint, p. 6. The complaint merely cites 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b) without tying any facts to these provisions.

<sup>4</sup> Perhaps the complainant is under the mistaken assumption that recipient committees are supposed to undertake some sort of “investigation” into each and every donor to ensure that there is nothing nefarious going on such as a contribution made by one person in the name of another. Clearly that has never been a requirement as it relates to contributions from individuals, and it would be a baffling overreach to impose that requirement on an independent-expenditure-only Committee that can legally accept contributions from all kinds of entities.

<sup>5</sup> The FEC’s regulations at 11 C.F.R. § 103.3(b)(2) contemplate that at the point a recipient committee “discovers” a contribution to have been made in the name of another, a refund is to be made. Respondent CFP certainly will comply with that rule if such circumstances arise.

<sup>6</sup> 11 C.F.R. § 111.4(d)(3). It is important to note that the complainant in MUR 7017 did not even make any claim against CFP, almost certainly because there were no facts to cite in support of the bare legal citations excreted by the complainant in MUR 7014. The complainant in MUR 7017 did not even name CFP as a respondent. For that reason, by the way, the better course would have been for the Office of General Counsel to not even send a copy of the MUR 7017 complaint to CFP.

<sup>7</sup> 52 USC § 30109(a)(2).

<sup>8</sup> See precedents cited in MUR 6296 (Kenneth R. Buck, *et al.*) Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen (June 14, 2011), pp. 4-6. As noted in that Statement of Reasons at n. 21, the “reason to believe” standard is higher than the standard for sustaining a civil complaint in the context of a motion to dismiss for failure to state a claim. This makes sense because the “reason to

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complainant like CREW has provided no evidence whatsoever of facts that would constitute a violation, all of these descriptive terms can be applied by the Commission.

Commission precedent demands that the complaints against CFP be dismissed. In five recent MURs related to claims of "contributions in the name of another" that involved allegations of contributors attempting to conceal their identities by using limited liability companies to make contributions to independent expenditure only committees (*i.e.*, Super PACs), the Commission dismissed all of the Complaints.<sup>9</sup> Importantly, in those cases where the First General Counsel's Report noted there was "no evidence to suggest"<sup>10</sup> the recipient committees knowingly accepted a contribution in the name of another, the recommendation consistently was to find no "reason to believe" that the recipient committees violated 52 USC § 30122.<sup>11</sup> Even before these recent complaint dismissals related to SuperPAC contributions, the Commission has rarely found "reason to believe" that a recipient committee knowingly accepted a contribution made by one person in the name of another person.<sup>12</sup> The Commission, in fact, has typically found "reason to believe" only when there has been overwhelming evidence that the recipient committee played an integral role in setting up and carrying out a scheme to thwart the contribution limits or

believe" determination reflects at least some assessment that the complaint-filing standards quoted above have been met, that there has been adequate identification of the source of the allegations, that the facts alleged would constitute a violation if true, and that there is sufficient reliability and credibility in the complaint such that the investigatory and enforcement power of the federal government should be unleashed against participants in the political process. In the matter at hand, there are no factual obligations purported related to CFP's wrongdoing so it would clearly fail to survive even the motion to dismiss for failure to state a claim test. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level.").

<sup>9</sup> See MUR 6485, 6487, 6488, 6711, and 6930 Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman (April 1, 2016).

<sup>10</sup> MUR 6485 (W Spann LLC, *et al.*) First General Counsel's Report (Aug. 28, 2012), p. 16.

<sup>11</sup> MUR 6485 (W Spann LLC, *et al.*) First General Counsel's Report (Aug. 28, 2012) (recommending a finding of "no reason to believe"); MUR 6930 (Prakazrel "Pras" Michel, *et al.*) First General Counsel's Report (Nov. 19, 2015) (recommending a finding of "no reason to believe"). Note that in MUR 6711 (Specialty Investments Group, *et al.*) a recommendation of "reason to believe" was made in the First General Counsel's Report (June 6, 2014); however, specific details related to the recipient committee's knowing acceptance of the contributions at issue were brought to light in an Amendment to Complaint (April 24, 2013).

<sup>12</sup> See MUR 6217 (David Vitter for U.S. Senate, *et al.*) and MUR 6463 (Democratic National Committee, *et al.*), where the First General Counsel's Reports recommended, and the Commission found, "no reason to believe" a violation by the recipient committee related to "knowingly accepting a contribution made one person in the name of another" occurred; and see MUR 6215 (Friends for Harry Reid, *et al.*) where the First General Counsel's Report recommended a finding of "no reason to believe" a violation occurred, and the Commission closed the file.

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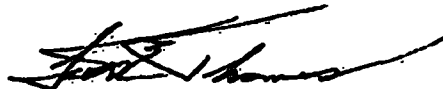
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disclosure rules.<sup>13</sup> Clearly, complainants in these matters have raised no evidence, let alone evidence of this nature.

**Conclusion**

In summary, complainants have provided no basis whatsoever for the Commission to make a finding of "reason to believe" against CFP. Further, the Commission should dismiss these matters altogether, even regarding the donor, because they arose before the Commission's recent clarification of its enforcement posture in this area (in cases noted in n. 9). The agency will have plenty of opportunity to address complaints in this area that arise from activity subsequent to that clarification.

Respectfully submitted,



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<sup>13</sup> See MUR 6922 (ACPAC ACA International Political Action Committee, *et al.*) where the First General Counsel's Report recommended, and the Commission found "reason to believe" a violation by the recipient committee related to "knowingly accepting a contribution made one person in the name of another" occurred.